

WATER ALLOCATION PROGRAM DEVELOPMENT WATER RIGHTS SUBCOMMITTEE MEETING

MINUTES OF MEETING February 6, 2003

Members Present:

Dale Thompson
Kendra Beaver
Al Bettencourt
Brian Bishop
John Garry
Caroline Karp
Jon Schock
Gregory Schultz
John Spirito
Katherine Wallace

WRB Staff Present

Kathy Crawley

Members Absent:

Fred Crosby
Peter Dennehy
Christopher D'Ovidio
John Killoy
Mary Ellen McCabe
Rebecca Partington
Peter Pascucci
Ken Payne
Paul Ryan
Connie McGreavy
Wendy Waller

I. CALL TO ORDER:

With a quorum present, Dale Thompson called the meeting to order at 1:15 PM.

II. APPROVAL OF MINUTES:

After some discussion of the revised mission statement, the minutes were approved on a motion from Jon Schock seconded by John Garry.

III. ITEMS FOR ACTION:

- A) **Mission Statement** (see discussion)
Incorporate changes from last meeting.
- B) **Group Water Allocation Presentation, February 27, 2003** (see discussion)

IV. ITEMS FOR DISCUSSION:

A) Group Water Allocation Presentation, February 27, 2003

Kathy Crawley and Dale Thompson confirmed that the Water Rights Subcommittee was on the agenda to present at the next Water Allocation Program Development Meeting to be held later this month. The group agreed that Dale Thompson would report the majority of progress to date and certain other committee members would present their findings. The Water Rights Subcommittee would continue to research water rights issues after this meeting and would report them to the larger group as needed.

B) Revise Mission Statement

The subcommittee incorporated the changes from the last meeting into the mission statement. It now reads:

Review existing water rights doctrines in the United States and Rhode Island in particular and recommend a suitable rights structure for Rhode Island. Clarify the existing regulatory framework of water management in Rhode Island by depicting organizational authority with water use and identify any inconsistencies in this process.

C) Reasonable Use of Water in Rhode Island

Dale Thompson presented, “A Summary of the Requirement that Uses of Water Rights in Rhode Island Must be Reasonable.” Past case law demonstrates that water rights in Rhode Island are defined in respect to other users and uses that are unreasonable to others. There was not as much available case law relating to groundwater, and the cases that did exist related to groundwater quality rather than the amount of groundwater use. Discussion ensued as to whether reasonable limitations also applied to the quantity of groundwater use. Members also discussed how relevant past cases were to the current situation in Rhode Island where water sources are in greater demand and demonstrating increased signs of stress. However, the majority of the group came to the conclusion that it was necessary to draw on past legal decisions in order to determine current doctrines in Rhode Island and what changes, if any, may be necessary. It should be identified where further regulations are necessary and what agencies already have authority over water.

D) Diagram Illustrating Water Use and Regularity Authority

Caroline Karp presented several diagrams produced by the Narragansett Bay Project, the Rhode Island Department of Environmental Management, and Katherine Wallace illustrating the path of water from withdrawal to discharge and the federal and state agencies with authority over water resources. She stressed that many of the true powers concerning water use are not illustrated on the diagrams of federal and state agencies. In Rhode Island, many decisions are delegated to local, quasi-public, and private entities. The diagrams will be revised to illustrate the connection between federal and state agencies. Kathy Crawley will collect feedback from subcommittee members regarding the accuracy of the diagrams, and Katherine Wallace agreed to present these findings to the entire group on February 27.

E) Public Laws Regarding Water Rights & Agricultural Exceptions

Al Bettencourt briefly presented Rhode Island statutes exempting agricultural practices from water regulations (RIGL 2-1-22 & 46-15.7-1 (b)). Members of the subcommittee noted that these laws were open to interpretation. The group agreed to review the statutes independently and discuss them at the next Water Rights Subcommittee meeting. Dale Thompson stated that he would note these sections of the Rhode Island General Laws to the entire group at the February 27 meeting. Al Bettencourt also provided the subcommittee with the American Farm Bureau policy statement that was adopted in 1995 and reaffirmed in 2003.

F) Alternatives to the Regulated Riparian Code

Brian Bishop expressed his opposition to the Regulated Riparian Code, stating that it would be overbearing for Rhode Island. He felt that the state should limit additional police forces of water use exclusively to drought periods. Dale Thompson noted that no

state had adopted the entire Code, but specific portions could be applicable and useful to Rhode Island. Brian Bishop stated that it would be more useful to revise existing laws than to adopt a new doctrine.

G) Public Laws Regarding Water Rights & Public Supply Districts

Jon Schock presented the sections of the Rhode Island General Laws that were applicable to public water supply systems (RIGL 46-30-2 through 46-30-7). He also distributed the enabling legislation for the Bristol County Water Authority and the Kingston Water District and South Kingstown Water Department (RIGL 46-15.5-1; 46-15.5-2; Chapter 72 (1963); 90-H 9114 (1990)). He explained that this legislation provided quasi-public agencies with the ability to set rates, levy taxes, and be self-sufficient. Dale Thompson said that he would note these regulations at the February 27 meeting.

H) Report on Some Section's of Riparian Code

With the consent of the group, Greg Schulz agreed to defer his discussion of which portions of the Regulated Riparian Code would and would not be useful for Rhode Island and his discussion of deeded rights.

V. OTHER BUSINESS

The next meeting was scheduled for Tuesday, March 11, at 2:30 PM.

VI. ADJOURNMENT

On a motion by Brian Bishop seconded by Greg Schulz, the meeting adjourned at 3:07 PM.

Respectfully submitted,

Dale Thompson
Roger Williams University School of Law

Katherine Wallace
Brown University

**Note: For more information on Water Allocation, visit: <http://www.seagrant.gso.uri.edu/scc/wrb/index.html>.*